

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LUKE EDWARD FOSTER,

Defendant.

No. 3:21-mj-00615-MMS



AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Kirk Oberlander, having been first duly sworn, do hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application for a criminal complaint and arrest warrant pursuant to Federal Rules of Criminal Procedure 3 and 4. As explained more fully below, I have probable cause to believe that LUKE EDWARD FOSTER has committed the following federal criminal offenses:

Count 1: Distribution of Controlled Substances, in that on or about November 9, 2021, within the District of Alaska, LUKE EDWARD FOSTER knowingly and intentionally distributed a controlled substance, to wit: psilocybin, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C).

Count 2: Possession of Controlled Substances with Intent to Distribute, in that on or about November 23, 2021, within the District of Alaska, LUKE EDWARD FOSTER knowingly and intentionally knowingly and intentionally possessed a controlled substance with intent to distribute, to wit: psilocybin, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C).

Count 3: Possession of Controlled Substances with Intent to Distribute, in that on or about November 23, 2021, within the District of Alaska, LUKE EDWARD FOSTER possessed firearms in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A)(i).

82021123

2. The statements in this affidavit are based in part on information provided to me by other law enforcement officers, police reports, my own investigation of this matter, and my training and experience. Since this affidavit is being submitted for the limited purpose of establishing probable cause to support a complaint and securing an arrest warrant, I have not included each and every fact known to me concerning this investigation.

3. I am a Special Agent with the Federal Bureau of Investigation. I have been a Special Agent with the FBI since March 2009. Since that time, I have been assigned investigative responsibilities in the areas of violent crime, gangs, drugs, cyber national security, child exploitation, public corruption, civil rights (Color of Law, Hate Crimes), money laundering and fraud in the Anchorage Field Office, where I am currently assigned. I have received numerous continuing education classes and seminars in investigative techniques related to the above violations. Prior to being an FBI Special Agent, I served as an Officer with the United States Coast Guard for eight years, conducting search and rescue, alien-migrant interdiction, counter-drug, fisheries and homeland security operations on the high-seas, coastal and inland waters. Additionally, I earned a Bachelor of Science degree in Civil Engineering in May 2000 from the U.S. Coast Guard Academy.

PSILOCYBIN

4. Based on my training and experience, psilocybin is a chemical found in certain fresh or dried mushrooms. Psilocybin is listed as a Schedule I controlled substance under the Controlled Substances Act, meaning that it has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for

8-20211123

use under medical supervision. Mushrooms containing psilocybin are available fresh or dried and have long, slender stems topped by caps with dark gills on the underside. Fresh mushrooms have white or whitish-gray stems; the caps are dark brown around the edges and light brown or white in the center. Dried mushrooms are usually rusty brown with isolated areas of off-white. Psilocybin has hallucinogenic properties and can induce an inability to discern fantasy from reality, as well as panic reactions and psychotic-like episodes in higher doses: at overdoes quantities it can induce longer, more intense hallucinogenic episode, psychosis and death, as well as physical symptoms including nausea, vomiting, muscle weakness, and lack of coordination. Mushrooms containing psilocybin are grown and illegally trafficked to users seeking these hallucinogenic properties. End users may eat entire mushrooms, or may brew teas or add mushrooms to other foods. Common street names used by traffickers, producers, and users include “magic mushrooms”, “mushrooms”, and “shrooms”.

5. Psilocin is a substituted tryptamine alkaloid found along with psilocybin in mushroom, which also has hallucinogenic properties. Psilocin is a Schedule I controlled substance.

FACTS ESTABLISHING PROBABLE CAUSE

6. While working as a Special Agent with the FBI, I became aware of an account on the social media service Instagram that uses the username “FrostyFungi”. A review of material associated with this account appears to relate to the cultivation, distribution, and use of psilocybin mushrooms dating back to at least January 2020. The pictures and

Q 20211123

captions describe how to cultivate psilocybin mushrooms starting with a spore solution. Early posts and picture captions provide hashtags of #shrooms and #psilocybin, allowing individuals interested in psilocybin mushrooms to locate the posts more easily. In addition, the profile of the “FrostyFungi” account reads “Studying the magic of mushrooms. DM’s are open to conversation. NOTHING FOR SALE.”

7. In my training and experience, it is common for drug traffickers to publicly disclaim that they are involved in trafficking in the belief that doing so will insulate them from detection by law enforcement. Notwithstanding this disclaimer, it is my opinion, based on my training and experience, that the user of the “FrostyFungi” account employs it to further the distribution of psilocybin mushrooms. As noted above, the profile indicates that “DM’s are open”, i.e. that users can send private messages through Instagram to the user of the account. The profile also refers to “magic ... mushrooms”, a common street name for psilocybin mushrooms, and many posts use the hashtags relating to psilocybin mushrooms, allowing interested purchasers to more easily locate the “FrostyFungi” account.

8. Additionally, several pictures visible on the account indicate the production and distribution of the mushrooms. At least two photos depict scales measuring out the weight of product. In one picture, the doses are capsulized on the scale. In another photo, dried mushrooms are shown packaged in several small resealable plastic bags consistent with distribution. Based on my training and experience, the quantity of psilocybin mushrooms depicted is not consistent with personal use quantities. In another photo, a small mushroom is depicted on a detailed fingertip, the caption reads, “Time for a micro dose.” Captions to

JD 20211123

many photos also indicate the user will make teas with the mushrooms. several pictures visible on the account indicate the production and possible distribution of the mushrooms. At least two photos depict scales measuring out the weight of product. In one picture, the doses are capsulized on the scale. In another photo, dried mushrooms are shown packaged in several small resealable plastic bags consistent with distribution. The number of mushrooms depicted is not consistent with personal use quantities. In another photo, a small mushroom is depicted on a detailed fingertip, the caption reads, "Time for a micro dose." Captions to many photos also indicate the user will make teas with the mushrooms.

9. On or about November 4, 2021, an undercover agent (UA) contacted the "FrostyFungi" account on Instragram. The account indicated that there were stickers with a FrostyFungi logo available, and the UA asked to purchase one. The user of the "FrostyFungi" account agreed to sell a sticker for \$10. They agreed to meet at the Walmart on A Street in midtown Anchorage. FOSTER arrived to the meeting at Walmart in a Toyota RAV4 bearing Alaska license plate JRN657 (the "SUBJECT VEHICLE"). The UA provided Foster with \$20. As the UA approached the vehicle, he noticed that FOSTER had a Glock pistol in his lap with a light attachment. FOSTER said since the UA was giving him the \$20, FOSTER wanted to give him something. FOSTER put his handgun on the passenger seat, got out of the vehicle, and opened the back door. FOSTER got a small soft sided cooler type bag and opened it. In the bag, the UA observed several dried mushrooms, what looked like a foil wrapped bar, and some gel tabs with a green powder in them. FOSTER got out three gel tablets and handed them to the UA. FOSTER and the UA talked

Q21123

about what was in them. FOSTER said the tablets were a low dose of three different mushrooms. FOSTER showed the UA a chocolate bar, wrapped in foil, that he had made, as well as some of the mushrooms. FOSTER told the UA how one had to watch how much one takes, otherwise one would be tripping “hard”. FOSTER and the UA talked about FOSTER’s Glock 45 MOS handgun. Based on my training and experience, I know the Glock 45 MOS to be a compact 9mm semiautomatic pistol with an attachment system designed to allow for the easy installation of custom optics on the pistol slide. FOSTER told the UA how the psychedelic mushrooms could help medicinally, and how “big pharma” was going to try and take over. FOSTER said his purpose was spreading information and helping people. The pills field tested presumptive positive for psilocin or psilocybin.

10. The UA continued communications via social media with FOSTER. The UA arranged to meet with FOSTER again on November 9, 2021. The UA requested more of the pills and some whole pieces of mushrooms. FOSTER messaged the UA a “menu” similar to the one pictured above. Based on the options depicted on the menu, the UA asked for 15 of the microdose pills for \$50, 3.5 grams of whole mushrooms for \$50, and two more decals for \$20. The UA recorded the serial numbers for the \$120 (six \$20 bills) in buy funds.

11. FOSTER met the UA while driving the SUBJECT VEHICLE, and they exchanged the \$120 for 15 of the microdose pills, 3.5 grams of whole mushrooms, and two more decal stickers. The UA asked FOSTER what kind of mushrooms they were, and FOSTER said

8/20/21/23

they were psilocybin, specifically albino avery. FOSTER described growing the mushrooms from spores and the different steps he takes to grow them. The UA asked FOSTER how much of the mushrooms the UA should take, and FOSTER said to start with a gram. FOSTER asked how the UA had found him and admitted that he was worried because possession and selling mushrooms was still illegal. FOSTER then told the UA how his goal was to teach people how to grow their own mushrooms. FOSTER said he believed psilocybin would be legalized within a few years. FOSTER said he had two kinds of microdoses. He listed the ingredients: psilocybin, vitamin B3 Niacin, and linesman mushroom. FOSTER said some of them had a flushing ingredient, like pre-workout supplements, and the other ones did not. FOSTER told the UA he had given non-flushing ones on the first meeting, and gave those again, but also gave one extra flushing pill to try. FOSTER told the UA to be careful to not to get arrested, and that he (i.e. FOSTER) also needed to be careful not to get arrested. FOSTER said if an officer caught him, he would say he just found the mushrooms growing in a park on some wood chips, although FOSTER acknowledged that he had never actually found them growing in the wild.

12. During the meeting, the UA asked FOSTER about the Glock pistol he had been carrying during the first meeting, including whether he planned on getting a silencer for it. FOSTER said he was not, but that he was going to get a red dot for that one. FOSTER said he had gotten a Surefire silencer for his rifle. FOSTER said he was probably going to make a silencer. FOSTER also talked about having a “Frankenstein” built rifle. Based on my training and experience people refer to combining different parts from different



manufacturers to make a complete firearm. FOSTER talked about buying his girlfriend a Beretta pistol. FOSTER told the UA that he met a person named “Kyle” who had made a 3D printed gun FOSTER said he spent his whole Permanent Fund Dividend on things like an ax, rope, and a 3D printer. FOSTER said he intended to set up once he had enough space for it. FOSTER said the way technology had advanced one can print a whole gun in a weekend. FOSTER described viewing YouTube videos with different designs for 3D printed firearms. FOSTER estimated that he had spent about \$6,000 since 2019 on firearms and ammunition. FOSTER said that he wasn't taking any chances, and he wasn't getting vaccinated. And he added that he grows mushrooms, and he did not want to take any chances and did not want to get a knock on the door at 3 a.m. by “twelve guys in riot gear”. Based on this statement and statements and photographs posted on his social media accounts, it is my belief, informed by my training and experience, that FOSTER possesses has his firearms, ammunition, and tactical gear to counter government and law enforcement actors and to protect the premises where he manufactures and prepares to distribute controlled substances. FOSTER said he just picked up a thousand rounds of 9 mm ammo for \$350 and already had three thousand rounds of 7.62mm ammunition. As FOSTER and the UA were parting, FOSTER said that he was going home to make a “Tannerite stuffed dog”.

13. Based on my training and experience, including a review of the relevant Material Safety Data Sheet, I am aware that Tannerite is a brand of binary exploding rifle targets designed to detonate on impact from a high-powered rifle. It is comprised of two

82021123

individually packaged components that are mixed by the consumer immediately before using. The components are an oxidizer, ammonium nitrate (Part A) and a fuel, aluminum powder (Part B). The two components are sold together but packaged separately and are inert unless they are combined, the Tannerite product is not legally classified as an explosive and can be sold or purchased without an explosives permit or license. When combined, however, the two components are explosive.

14. Based on my training and experience, I am aware of that anti-law enforcement subcultures online have discussed creating stuffed dogs filled with Tannerite as a solution to a perceived problem of police officers killing pet dogs during enforcement actions. The discussion theorize that a police officer will shoot the stuffed dog, causing the Tannerite to explode, injuring, maiming, or killing the officers nearby. FOSTER's statement to the UA discussed above appears to be consistent with these discussions.

15. I applied for and obtained federal search warrant 3:21-mj-00609-KFR, 3:21-mj-00610-MMS, and 3:21-mj-00611-KFR, authorizing searches of, respectively, the SUBJECT VEHICLE, FOSTER's residence, and FOSTER's person.

16. Agents executed these warrants on November 23, 2021.

17. During a search of FOSTER's residence, agents located the following items:

- a. An electric one-wheel scooter with yellow trim;
- b. Suspected psychedelic mushrooms;
- c. Dozens of bags of capsules, which appear to be micro-doses related to the psychedelic mushrooms;

Q 202/112

- d. Multiple firearms, both long rifles and pistols. One long rifle in particular, an AR-15 style rifle had what appeared to be an attachment that could be a silencer;
- e. Approximately \$7,000 in cash, largely comprised of \$100 bills;
- f. Psychedelic mushroom growing ingredients and paraphernalia;
- g. Thousands of rounds of ammunition;
- h. A black flag with a white colored swastika;
- i. And white stickers with black writing depicting a swastika and the following words, "WE ARE EVERYWHERE." The approximate dimensions of the stickers three (3) inches wide by five (5) inches long.

18. Agents stopped FOSTER driving a Toyota Camry; the SUBJECT VEHICLE remained parked at the residence. At the time of the drafting of this affidavit, the SUBJECT VEHICLE had yet to be searched.

19. FOSTER was transported to the FBI Field Office. Following the execution of the warrant for a search of his person, a search of his person revealed a foil package with stickers on the inside, consistent with LSD. FOSTER also had approximately \$131 in cash on his person. The serial numbers did not match those used by the UA.

CONCLUSION

20. I have probable cause to believe that FOSTER has committed the offenses described in this complaint. Accordingly, I ask the court to issue a warrant for FOSTER's arrest in accordance with Federal Rule of Criminal Procedure 4(a).

RESPECTFULLY SUBMITTED,



Kirk Oberlander
Special Agent, FBI

ATTESTED TO before me by reliable electronic means on November 23, 2021.



The Hon. Matthew M. Scoble
Chief U.S. Magistrate Judge